

of age or under. Accordingly, even though all the other tests of the exemption are met, the exemption is inapplicable in the case of an employee over 16 years of age and the employer must pay to such an employee the applicable statutory minimum wage unless his operations come within the reach of some other exemption, such as section 13(a)(6)(A). Furthermore, although section 13(a)(6)(D) provides a minimum wage and overtime exemption for minors 16 years of age or under, the employer must nevertheless comply with the child labor provisions of the Act prohibiting the employment of minors in agriculture except under certain conditions and circumstances. These provisions are discussed in part 1500, subpart G of this title.

§ 780.322 Is employed on the same farm as his parent or persons standing in the place of his parent.

(a) The words “employed on the same farm” are accorded their natural meaning with the usual caution, however, that as in the case of all other exemptions, the exemptive language is to be construed narrowly. (See § 780.2.)

(b) Individuals who are considered as “his parent or persons standing in place of his parent” include natural parents, or any other person where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.

§ 780.323 Exemption for range production of livestock.

Section 13(a)(6)(E) which was added to the Act by the Fair Labor Standards Amendments of 1966 provides an exemption from the minimum wage and overtime requirements of the Act for any employee “employed in agriculture” if he is “principally engaged in the range production of livestock.” It is apparent from the language of section 13(a)(6)(E) that the application of this exemption depends on the type of work performed by the individual employee for whom exemption is sought

and on where the work is done. A determination of whether an employee is exempt therefore requires an examination of that employee’s duties and where they are performed. Some employees of the employer may be exempt while others may not.

§ 780.324 Requirements for the exemption to apply.

(a) All the following conditions must be met in order for the exemption to apply to an employee:

- (1) He must be “engaged in agriculture”;
- (2) Be “principally engaged”;
- (3) On the “range”, and
- (4) In the “production of livestock.”

(b) Since the raising of livestock is included in the definition of agriculture under section 3(f) of the Act (see §§ 780.119-780.121 of subpart B of this part), the range production of livestock would normally be deemed agriculture work, and, consequently, an employee, during this time he is engaged in such activities, would meet the basic requirement of the exemption that he be “employed in agriculture.”

The following sections discuss the meaning and application of the other requirements.

§ 780.325 Principally engaged.

(a) To determine whether an employee is “principally engaged” in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee’s time.

(b) Under this principle, an employee who spends more than 50 percent of his time during the year on the range in

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the duties designated as range production duties would be exempt. This is true even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches.

§ 780.326 On the range.

(a) For purposes of this exemption, "range" is defined generally as land that is not cultivated. It is land that produces native forage for animal consumption, and includes land that is revegetated naturally or artificially to provide a forage cover that is managed like range vegetation. "Forage" as used here means "browse" or herbaceous food that is available to livestock or game animals.

(b) The range may be on private or Federal or State land, and need not be open. Typically it is not only noncultivated land, but land that is not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Typically, also, many acres of range land are required to graze one animal unit (five sheep or one cow) for 1 month. By its nature, range production of livestock is most typically conducted over wide expanses of land, such as thousands of acres.

§ 780.327 Production of livestock.

For an employee to be engaged in the production of livestock, he must be actively taking care of the animals or standing by in readiness for that purpose. Thus, such activities as herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise assisting in the raising of livestock and in such immediately incidental duties as inspecting and repairing fences, wells, and windmills would be considered as the production of livestock. On the other hand, such work as terracing, reseeding, haying, and constructing dams, wells, and irrigation ditches would not be considered as the production of livestock within the meaning of the exemption.

§ 780.328 Meaning of livestock.

The term "livestock" includes cattle, sheep, horses, goats, and other domes-

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tic animals ordinarily raised or used on the farm. This is further discussed in § 780.120. Turkeys or domesticated fowl are considered poultry and not livestock within the meaning of this exemption.

§ 780.329 Exempt work.

(a) The standard that must be used to determine whether the individual employee is exempt is that his primary duty must be the range production of livestock and that this duty necessitates his constant attendance on the range, on a standby basis, for such periods of time so as to make the computation of hours worked extremely difficult. The fact that an employee generally returns to his place of residence at the end of each day would not affect the application of the exemption.

(b) Thus, exempt work must be performed away from the "headquarters." The headquarters is not, however, to be confused with the "headquarters ranch." The term headquarters has reference to the place for the transaction of the business of the ranch (administrative center), as distinguished from buildings or lots used for convenience elsewhere. It is a particular location for the discharge of the management duties. Accordingly, the term "headquarters" would not embrace large acreage, but only the ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity. The balance of the "headquarters ranch" would be the "range."

(c) Furthermore, the legislative history indicates that this exemption was not intended to apply to feed lots or to any area where the stock involved would be near headquarters. Its sponsors stated that the exemption would apply only to those employees principally engaged in activities which require constant attendance on a standby basis, away from headquarters, such as herding, where the computation of hours worked would be extremely difficult. Such constant surveillance of livestock that graze and reproduce on range lands is necessary to see that the animals receive adequate care, water, salt, minerals, feed supplements, and protection from insects, parasites, disease, predators, adverse weather, etc.